THE HON'BLE MR JUSTICE K.C. BHANU

On Tuesday, the twentieth day of September

Two thousand and five..

W.P. NO.4351 of 2005

Kurra Srinivasa Reddy.

…….Petitioner.

And

The Commissioner of Endowments,

Boggulagunta, Hyderabad and another.

……Respondents.

O R D E R:

This writ petition is filed seeking declaration that the action of the 2nd respondent in issuing notification to conduct auction on 5.3.2005 for rights to sell coconut and pooja material, is arbitrary and illegal.

The brief facts which are relevant here are that the petitioner is doing some part time job. Then, the respondent No.2, issued notification on 19.1.2005, calling for interested persons, to participate in the auction, for the lease hold rights to sell coconut and other connected pooja material at the shop in front of Sri

Anjaneyaswamy temple, notifying the auction date as 9.2.2005. Though the petitioner used to visit temple regularly, he came to know about the auction on 9.2.2005 and that the said auction was not completed. Thereafter the temple authorities issued another notification to conduct auction 25.2.2005 and the petitioner participated in that second auction and as highest bidder offered Rs.5,900/- per month and when he has been completing the formalities, he was shocked to see the pamphlet showing that auction would be held on 5.3.2005 as his bid was accepted on 25.2.2005, but there was no indication that the previous auction was being cancelled and that the auction and fresh auction would be held on 5.3.2005 and that in view of the fact that there was no time gap of ten days from the date of notification and the date of auction. So, there must be at least ten days gap period is not there. Hence the petitioner filed this writ petition challenging the action of the respondents.

Inter alia, the respondents filed counter affidavit denying the allegations made in the affidavit of the writ petitioner and further contended no bidders were participated in the auction dated 9.2.2005 and so the same was cancelled. Again the auction was conducted on 25.2.2005, in which the petitioner had participated. The auction which was held on 25.2.2005 was also cancelled, in view of the fact that the amount of bid offered by the petitioner is lower rate than the previous year bid amount, therefore, the same was not accepted and the authorities decided to conduct fresh auction and accordingly auction was conducted on 5.3.2005. Hence prayed to dismiss the writ petition.

The learned counsel for the petitioner contended that the petitioner became the highest bidder when the 2nd respondent issued auction notification on 10.2.2005 and that without canceling the earlier auction, the respondents issued another notification calling fresh tenders which would be held on 5.3.2005 and that as per rules the auction notice shall be published atleast ten days prior to the date fixed for participation in the bid. Therefore, prayed to allow the writ petition.

The learned Government Pleader for Endowments contended that the amount of bid offered by the petitioner is lower rate than the previous year bid amount, therefore, the same was not accepted and the authorities decided to call for

fresh auction and accordingly auction was conducted on 5.3.2005. Therefore, he relied on a decision in **Chilkuri Sakunthalamma and another Vs. Commissioner of Charitable and Hindu Religious Endowments Department, Hyderabad and others**[1] on the ground that the petitioner have no right to challenge the same.

The facts are not in dispute. The petitioner was the highest bidder when the auction was held on 25.2.2005, in pursuance of the notice dated 10.2.2005, the amount offered by the petitioner was Rs.6,000/- per month. The respondents filed their counter affidavit stating that the said auction was held on 25.2.2005 was not accepted by the authorities and the same was cancelled, in view of the fact that the highest bid amount offered by the petitioner is lower than the rate of the bid amount of previous years and therefore in the interest of institution a fresh auction was conducted. The learned counsel for the respondents relied on a decision in **Chilakuri Sakunthalamma's case** (1-supra)**,** wherein it is held:

> "When the power is conferred by the statute on the Commissioner and the guidelines are laid down under the Act itself and the Rules made there-under, it is expected of that the act done by the authority is for the benefit of the institution or the endowment and the consideration must be the price fetched at auction is reasonable and proper. When the exercise of the power is being done in the interest of the institution, the conferment of the power cannot be said to be arbitrary or capricious nor the officer is assumed to have exercised the power at his whim and caprice. In each case, it is to consider whether the Commissioner has considered the objective facts based on record. The bidder stands in the category of only an offerer and he does not acquire a right so long as there is no confirmation of the sale. Confirmation is a condition precedent for sale to become final. The procedure prescribed, under Section 74 read with the Rules, is just, fair and reasonable, consistent with the constitutional mandate of Article 21. Conferment of power on the Commissioner is not arbitrary nor unbridled."

On the same analogy, the learned counsel contended that the right of the petitioner is not infringed in any manner. Since the highest bid offered by the petitioner in pursuance of the auction held on 25.2.2005 disapproved by the

competent authority.

The contention of the learned counsel for the petitioner is that the auction held on 5.3.2005 is to be set aside in view of the fact that there was no time gap of ten days from the date of notification and the date of auction and then the date of notification was 26.2.2005, whereas the auction was conducted on 5.3.2005. Therefore, there must be atleast ten days gap period is not there. Even assuming for a moment that ten days notice was there, the same cannot be knew to the benefit of the petitioner unless he brought to the notice of the Court that he was not aware of the auction which was held on 5.3.2005. The petitioner as stated in the affidavit, when he visited temple on 2.3.2005, he was shocked to see the pamphlet, which stated that new auction, would be held on 5.3.2005. Therefore, the petitioner was having knowledge that the auction would be held on 5.3.2005. So, it is not being held that the petitioner is not aware of the auction that was held on 5.3.2005.

Therefore, the writ petition is devoid of merits and is dismissed. Since, no right of the petitioner was infringed and without expressing any opinion with regard to the holding of auction within ten days from the date of notification, the above order is passed. It is made it clear that this order cannot take-place precedent in any case. No order as to costs.

Justice K.C.BHANU.

20th September 2005.

BCS